

REMARKS

After entering the instant amendment, claims 1-3 and 5-33 are pending in the present application, claim 4 having been previously cancelled and its subject matter incorporated into amended claim 2. Claim 30 was previously added. Claims 31-33 are new. The new claims 31-33 have been added to make clear that the composition is a personal cleansing composition (the claims are now directed to personal care cleansing products) which contain visually discrete layers which appear upon settling with 24 hours, 2 hours or 30 minutes. It is respectfully submitted that the instant application is now in condition for allowance. Support for the amendments to the claims can be found throughout the original specification and claims and in particular in the last paragraph on the bottom of page 8, and in the examples on pages 15-20, in particular, the examples on pages 16 and 18. No new matter has been added by way of the present amendment.

The Examiner has rejected the previously pending claims variously under 35 U.S.C. §102 and 103 for the reasons which are presented in the office action dated March 29, 2005. Applicants respectfully traverse the Examiner's rejections for the reasons which are presented in the sections which follow. It is respectfully submitted, that with the amendment to the claims, there is no way to conclude that the presently claimed invention is anticipated or rendered obvious by the art cited by the Examiner.

The §102 Rejections

The Examiner has rejected previously filed claims 1-2, 5-6, 8-21, 24-26 and 28-29 under 35 U.S.C. §102 as being anticipated by U.S. patent no. 6,043,204 ("Kaufman"). The Examiner cites Kaufman for teaching the use of a high density aromatic ester octyl methoxy cinnamate (column 4, line 64), as well as octyl salicylate which may also be a high density aromatic ester (column 6, lines 5-45), relevant surfactants (column 6, lines 5-45), exfoliating agents (column 8, line 35 for lactic and glycolic acid), penetration enhancers (column 8, lines 32-33 for propylene glycol, butylene glycol and glycerin) and the claimed low-density oil (column 7, lines 45-67). The

Examiner posits that the composition of Table 2, example 12 of Kaufman anticipates the present invention. Applicants respectfully traverse the Examiner's rejection.

The present invention, as described above, is referenced here. There is absolutely no evidence in Kaufman that Kaufman provides a disclosure which produces the presently claimed invention. Contrary to the Examiner's contention, the composition of table 2, example 12 does not give rise to the present invention because that composition is a completely mixed product which does not separate upon settling. That example is a composition which is a homogeneous emulsion, completely unlike the present invention and having only a single visual layer in the form of an emulsion (which itself has more than one phase, but which appears as a single visual layer, unlike the present invention. Moreover, there is no evidence in example 12 that in order to use the product one mixes the visually separate layers- precisely because there is no need to mix the homogenous emulsion produced. That omission of a mixing step prior to use of the composition of example 12 evidences that the composition of Kaufman *is not* a multilayered composition according to the present invention. There is simply no credible way that the composition of example 12 may be construed to be directed to a composition according to the present invention which settles into at least two visually distinct layers after mixing and consequently, Kaufman cannot be read to anticipate the present invention.

The §103 Rejection

The Examiner has also rejected previously filed claims 1-21 and 24-27 as being unpatentable over a combination of US 2002/20160023 of Bagdi, et al. ("Bagdi") and Kaufman. The Examiner cites Bagdi (same as PGPUB '023) as teaching multiphase formulations (see examples 1 and 2 for three and four phase formulations). The Examiner cites Bagdi further for teaching penetration enhancers, oils and exfoliating agents. The Examiner contends that Bagdi suggests the incorporation of sunscreens (the high density esters of the present invention). The Examiner cites Kaufman for teaching surfactants for use in body cleansing compositions along with other claimed ingredients.

Accordingly, the Examiner argues that it would have been obvious to one of ordinary skill in the art at the time of the present invention to prepare multiphase compositions of Bagdi and add the claimed sunscreens and surfactants of Kaufman for their beneficial effect on the skin. The motivation stems from the scientific knowledge that surfactants are used mostly in cleansing compositions and the motivation to add the sunscreen to the composition to provide protection from the sun. This, the Examiner contends, makes out a *prima facie* case of obviousness. Applicants respectfully traverse the Examiner's rejection.

The present invention relates to personal care cleansing products which are multiphasic and which produce *at least two visually distinct liquid layers* upon settling after mixing. The disclosures of Bagdi and Kaufman in combination in no way render the present invention obvious. Moreover, it is respectfully submitted that the Examiner has not made out a cogent case that the present invention is *prima facie* obvious over a combination of Bagdi and Kaufman because a combination of the cited disclosures would not produce a composition with at least two visually distinct layers which is a critical feature of the present invention. Rather, such a combination would produce a multiphasic composition as a homogenized emulsion which appears as a single visual layer. This is decidedly **not** the present invention.

The present invention relates to personal cleansing compositions such as body cleansers and shampoos, for example, which are multiple phase surfactant compositions comprising at least two visually distinct and separate liquid layers which appear upon settling after mixing, wherein the compositions comprise a first or lower high density layer consisting essentially of at least one high density aromatic ester (as defined in the specification on page 7 as a high density aromatic ester emollient/conditioning agent) having a specific gravity of greater than 1.00 and at least one additional layer consisting essentially of a surfactant solution having a specific gravity which is less than the specific gravity of the high density layer. The present invention is directed to compositions which exhibit activity as surfactant compositions having emollient characteristics and a pleasant two-layered liquid presentation. The compositions are particularly adapted as personal care cleansing compositions having both cosmetic characteristics and favorable presentation. Thus, the present invention relates to personal care compositions which exhibit excellent surfactant and emollient/conditioning characteristics with a superior

presentation, that presentation being the separation of the product into at least visually two distinct liquid layers.

Bagdi does not disclose or suggest the present invention. Bagdi, as perhaps hundreds/thousands of patents and other references in the cosmetic field, discloses the preparation of formulations by first preparing a composition in separate phases (actually, simple mixtures) and then mixes the phases together to form a final formulation or composition having a single layered presentation. Bagdi does not disclose or suggest that the phases should separate or that it is desirable to have them separate into at least two visually distinct liquid layers upon settling after mixing the final formulation. Indeed, such a proposition, is actually counterintuitive from the disclosure of Bagdi. Without any suggestion to provide a composition which actually separates into two distinct layers upon settling after mixing, Bagdi does nothing to render the present invention obvious. Bagdi's discussion of two phases refers to a typical emulsion, but an emulsion, by definition, does not present itself as having two visually distinct layers, as is the case with the present invention, but rather a single layer in order to promote consistency of formulation. Bagdi cannot reasonably be read to teach compositions according to the present invention which produce two visually distinct layers after settling and there is absolutely no mention or motivation to produce such a composition.

Kaufman, for reasons which have been previously stated, is not directed to compositions according to the present invention. For the reasons previously discussed, Kaufman does not make out an anticipatory rejection and cannot possibly *inherently* anticipate the present invention. The example the Examiner points to, example 12, does not separate into two visually distinct layers and is not taught to separate into two visually distinct layers. There is absolutely no evidence in Kaufman that the compositions disclosed therein are thoroughly mixed just prior to use- because such an approach would be seen as compromising the compositions taught therein. A typical storage stable cosmetic composition presents itself as a single layered composition, even if it is a bi-phasic or multi-phasic *emulsion*. That is the gist of the distinction between the prior art and the present invention. Whereas, the prior art teaches a multiple phase emulsion which is presented as a single visual layer in order to promote consistency, the present invention cuts completely against this common convention and provides a cosmetic composition

having at least two visually distinct layers which appear after a mixing step which makes the composition, due to the mixing, into a short-lived single layered composition. As such, Kaufman actually *teaches away* from the present invention. Indeed, a two-layered composition is not even mentioned by Kaufman. Moreover, there is absolutely no disclosure in Kaufman which would motivate one of ordinary skill to produce the present compositions- indeed the concept that gives rise to the present invention- that of allowing two visually distinct layers to form upon settling after mixing- is actually *contrary* to the teachings of Kaufman.

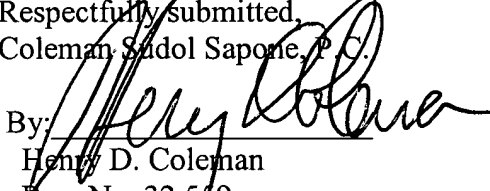
Without a rationale which recognizes that the separation of a composition into visually distinct layers is actually cosmetically *favorable* (as opposed to a negative characteristic generally recognized by those in the art as representative of *instability* and therefore merely accidental, if it ever exists), there can be no motivation in the combination of Kaufman and Bagdi to produce the present invention. Formulation chemists actually work overtime to *avoid the formation of distinct visual layers evidencing* separation as in the present invention. The idea is to maintain the integrity of the emulsion, i.e., a single visual layer throughout the composition which contains more than one phase. The same is true for the teachings of Kaufman and Bagdi. Without the express teaching of the present invention, the prior art cannot be read as creating the present invention, especially when the present invention, when read in context with the prior art teachings is viewed as being extremely *unfavorable* (i.e., unstable and undesirable) to the concepts of the present invention. Thus the teachings of the art are unlike the present invention which actively encourages phase separation because it is viewed as being desirable cosmetically and a necessary feature of the present invention. Because there is no motivation to create the present invention, there is nothing in the combined disclosure of Kaufman and Bagdi which would result in the production of the present invention which is directed to compositions which form visually distinct liquid layers upon settling after mixing. Note that in the examples in Bagdi and Kaufman, the final products which are produced are *uniform emulsions*, and in the particular case of Bagdi, the homogenous compositions are *gelled*- precisely to lock in the emulsion in a single visual layer and avoid any separation into layers- a critical feature of the present invention. Thus, the combined teachings of Kaufman and Bagdi actually *teach away* from the present invention at the point of invention (the multiphase visually layered nature of the final composition) and cannot be cogently used to render the present invention obvious. Without

some motivation or teaching (which is absent from Kaufman and Bagdi), the person of ordinary skill would provide a uniform, homogenous composition and would actually *avoid* the present invention.

For all of the above reasons, it is respectfully submitted that the present application is now in condition for allowance and such action is earnestly solicited. Three dependent claims have been added which take the place of a previously cancelled dependent claim. A fee in the amount of \$50 is due for the presentation of two new dependent claims. A petition for a one month extension of time is enclosed as is a notice of appeal. If the Examiner decides that any fee is required or credit is due, the Commissioner is authorized to charge any such fee or credit any such overpayment to deposit account 04-0838.

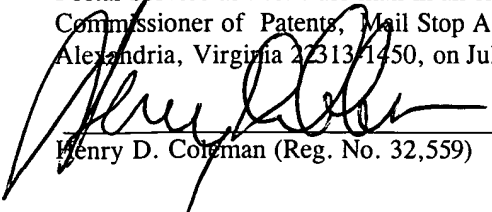
An indication of any charge made to the authorized Deposit Account is respectfully requested at the time of the issuance of a further office action, so that the charge may be accurately tracked for accounting purposes.

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Respectfully submitted,
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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to:
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